

STATE OF SOUTH CAROLINA

AMENDMENT TO LEASE AGREEMENT

COUNTY OF BARNWELL

September 11, 1979

WHEREAS, the Lessor, the State of South Carolina, acting through the State Budget and Control Board, and the Lessee, Chem-Nuclear Systems, Inc., entered into a lease agreement-dated April 6, 1976; and,

WHEREAS, according to the terms and conditions of said lease agreement as contained in Paragraph 7 therein, certain payments being made by the Lessee to the Lessor at quarterly intervals were to be increased at the end of a three-year period of time according to the terms and conditions of Paragraph 7; and,

WHEREAS, the parties recognize that such renegotiation in accordance with the terms and conditions of Paragraph 7 are impractical and not in the best interest of the parties; and,

WHEREAS, it is the desire and intention of the parties to amend the lease agreement with reference to Paragraph 7 and Paragraph 8 of the original lease agreement dated April 6, 1976, as hereinafter set forth.

NOW, THEREFORE, in consideration of the payments reserved herein and the mutual covenants made by the parties, Paragraph 7 and Paragraph 8-of the aforementioned lease agreement dated April 6, 1976, are amended as hereinafter set forth, to wit:

7. The Lessee understands that the storage and burial of radioactive waste requires perpetual surveillance and maintenance, and so long as it occupies the Site, the Lessee will undertake all surveillance and maintenance as required by all applicable laws, regulations, and licensing requirements for the protection of the public health and safety. The Lessee further understands that if for any reason at any time it should default, or fail to comply with the terms of its license, or for any reason withdraw from the premises, the Lessor would be required to assume surveillance and maintenance obligations and pay the surveillance and maintenance costs. The Lessee, therefore, covenants and agrees to pay to the Lessor, at quarterly intervals, the sum of 55 cents for each cubic foot of radioactive waste buried at the Site during the period from September 1, 1979, through April 5, 1980. Payments shall be made at quarterly intervals at the rate of 75 cents per cubic foot of radioactive waste buried at the Site during the period from April 6, 1980, through April 5, 1981, and at the rate of one (\$1.00) dollar per cubic foot from April 6, 1981, through April 5, 1982.

The rate of payment shall be re-negotiated by the parties to be effective April 6, 1982, with negotiations to begin not later than January 6, 1982. In the event the parties have not concluded such re-negotiations prior to March 6, 1982, Lessor, at its option, shall have the right upon written notice to Lessee to require the Lessee to make payments at a rate not to exceed two (\$2.00) dollars per cubic foot from April 6, 1982, until the consummation of negotiations; provided, however, should the re-negotiated rate be less than the rate required to be paid based upon the exercise of Lessor's option then such difference shall be credited to the account of the Lessee. In the event the re-negotiated rate exceeds the rate required to be paid based upon the exercise of Lessor's option, Lessee shall not be required to pay such excess until the effective date of the re-negotiated rate, but in no event later than July 1, 1982.

The parties expressly agree that the escrow fund for perpetual care of the waste buried at the Site established by the parties pursuant to an agreement dated April 21, 1971, and continued pursuant to the lease

dated April 6, 1976, shall continue to be maintained and the payments made pursuant hereto shall be added to such fund. Interest earned upon said fund for perpetual care shall accrue to the fund.

In order for the Lessor to determine the accuracy of payments by the Lessee, the Lessor shall have access to and the right to examine any pertinent books, documents, papers, accounts and records of the Lessee involving operations on the leased premises. Lessee agrees to surrender all receipt and burial records to Lessor five (5) years after the ending of the fiscal or calendar year to which the records' pertain or within one (1) year after vacating the Site. Surrendered records will be made available at the request of the Lessee.

The parties further agree that upon expiration or earlier termination of this lease, all materials buried at the Site prior to such expiration or termination shall remain so buried and shall be thereupon owned by and become the sole and exclusive responsibility of Lessor, its successors or assigns.

8. The Lessee will not, without the Lessor's written consent, violate any of the terms and conditions of this lease; will not violate the terms of authorizing licenses issued by the South Carolina Department of Health and Environmental Control, the Nuclear Regulatory Commission or any other appropriate authority; will not use any part of the leased premises in a manner not in compliance with the covenants and purposes of this lease; and will not fail to comply with any applicable laws, regulations, and ordinances of the United States and the State of South Carolina. If any such violation, misuse or non-compliance occurs, the Lessor, upon giving the Lessee a reasonable time in which to effect good compliance and sixty (60) days written notice of its intention to terminate this lease, shall have the right to reenter and take possession of the premises, and lease the Site to a third party, at the option of the Lessor. in the event of changes in the laws or regulations applicable to the Site for disposal of radioactive waste which makes such continued operations by Lessee impossible or economically unfeasible, Lessee shall have the right to terminate this lease upon reasonable notice of not less than six (6) months to Lessor.

In the event of termination, nothing contained herein shall give rise to any claim by Lessee against Lessor under this lease, and the Lessor and Lessee may mutually agree upon Lessee's use of the Site for another reasonable purpose; provided, however, the Lessor and Lessee shall then enter into such agreements or amended agreements as will insure the continuation of the perpetual care fund established April 21, 1971, and continued pursuant to Paragraph 7 of this lease.

In no event shall Lessor be prevented from using the Site for storage and disposal of radioactive wastes and materials generated within the State of South Carolina or from entering into any agreement with a third party to dispose of such wastes and materials on any basis whatsoever.

In the event of condemnation of the Site by exercise of the power of eminent domain, this lease shall terminate as of the date title is taken. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for loss or damage caused by such condemnation, and the fair market value of the Site shall be determined as the value of the highest and best use for such property, including, but not limited to, the use of the Site for disposal of radioactive waste. Unless the State of South Carolina institutes legal proceedings to condemn Lessee's leasehold interest, Lessee shall not seek to claim loss or damage from Lessor for the loss of such interest. No action by the State of South Carolina or any agency thereof, except condemnation by exercise of the power of eminent domain, shall be deemed a taking by the State of South Carolina.

Lessee specifically agrees to indemnify and hold harmless Lessor, its successors and assigns, of and from any and all damage, loss or liability for personal injury or property damage which may result or arise out of Lessee's operation of the Site, including, but not limited to, the payment of all reasonable fees and expenses incurred in the defense of any such claim made against Lessor by way of lawsuit or otherwise.

Lessee further agrees to cooperate fully with Lessor should any other claim be made against Lessor for any reason whatsoever; provided, however, that such cooperation shall not give rise to any pecuniary loss or expense to Lessee except as may arise as a result of a claim or suit against Lessee.

Neither this lease, nor any-term thereof, shall operate to restrain the Lessor, when acting in its capacity as Sovereign of the State of South Carolina, from fulfilling its responsibilities as Sovereign, including, but not limited to, a determination on the part of the Sovereign that a public emergency exists and that immediate State action is necessary.

Nothing contained in this lease shall be construed as a waiver by the State of South Carolina, acting through the Budget and Control Board, of its Sovereign Immunity.

Except as hereinabove amended, the lease agreement dated April 6, 1976, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, in duplicate, this 11<sup>th</sup> Day of September 1979.